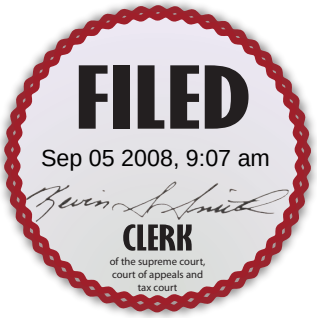

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IN THE
COURT OF APPEALS OF INDIANA

JAMES L. BRIGHT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 34A02-0802-CR-123
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable George A. Hopkins, Judge
Cause No. 34D04-0606-FB-95

September 5, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

James L. Bright appeals his sentence following his guilty plea to Battery, as a Class C felony. Bright presents a single issue for our review, namely, whether his sentence is inappropriate in light of the nature of the offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On May 22, 2006, Bright, William Waggle, and Dennis Spencer were in an alley behind 828 South Washington Street in Kokomo. Waggle was riding a bicycle, while Bright and Spencer were walking. An altercation arose between Waggle and Bright, during which Bright struck Waggle in the face four or five times. Bright then fled the scene. Waggle reported the incident to police and alleged that Bright had stolen nearly $7000 from him in the fray.

On July 11, 2006, the State charged Bright by information with robbery, as a Class A felony. On January 29, 2007, the State filed by information count II, charging Bright with battery, as a Class C felony. On the same date, the State filed a motion to dismiss the robbery charge, which the trial court granted. On February 2, 2007, Bright pleaded guilty to battery, as a Class C felony. At the sentencing hearing, the trial court found Bright's criminal history and the fact that he was on bond at the time of the offense to be aggravators. The court found as a mitigator that Bright had pleaded guilty, but noted that the plea was to a lesser offense with the more serious offense being dismissed.[1] The court then sentenced Bright to seven years executed. Bright now appeals.

[1] The State asserts in its brief that the State moved to dismiss the count alleging robbery, as a Class A felony, in exchange for Bright's guilty plea to the lesser offense of battery, as a Class C felony.

DISCUSSION AND DECISION

We may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Under Appellate Rule 7(B), we assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, the relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), clarified on other grounds on reh'g, 875 N.E.2d 218 (Ind. 2007). Bright must persuade the appellate court that his sentence has met this inappropriateness standard of review. See Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). We hold that Bright has not satisfied that burden here.

Bright's sentence is not inappropriate in light of his character. His criminal history includes convictions for auto theft, as a Class C felony, and sexual battery, as a Class D felony, in 1989; theft and sexual battery, as Class D felonies, in 1992; and reckless driving, as a Class B misdemeanor, and never having a valid license, as a Class C misdemeanor, in 2000. He failed to appear at six fee hearings in the misdemeanor cases. Bright was also charged with receiving stolen property, as a Class D felony, in 2002; with driving while suspended, as a Class A misdemeanor, in 2003; and theft, as a Class D felony, in 2004. Bright was on bond at the time of the instant offense.

But the record does not show that Bright pleaded guilty pursuant to a plea agreement, and the robbery charge was dismissed at least one week before Bright entered an open plea to the battery charge.

Bright asks us to consider that his four felony convictions occurred more than fifteen years ago and that the first two misdemeanor offenses occurred more than seven years before the instant offense. While his felony convictions are remote in time, those convictions are just part of the backdrop that describes Bright's character. And he acknowledges that he was on bond for two felony charges when he committed the underlying battery, but argues that the "presumption of innocence should limit the consideration of those charges to the fact that he violated the conditions of his pre-trial release by the commission of the instant offense . . . ." Appellant's Brief at 8. But even if we were to do so, such conduct does not reflect positively on Bright's character.

Bright requests that we consider the reason the fight occurred. Specifically, he alleges that he had chided Waggle about Waggle letting his pregnant girlfriend smoke crack. In response, Waggle pushed Bright and hit him in the face, then Bright punched Waggle four or five times in the face before running away. In essence, Bright argues that he "was indirectly attempting to protect an unborn child when he was physically attacked" by Waggle. Id. at 7. But we need not accord great weight to the cause Bright attributes to the battery. Regardless of the reason for the fight, after considering both his entire criminal history and recent violation of bond, we conclude that Bright's sentence, which is one year short of the statutory maximum,[2] is not inappropriate in light of his character.

Bright's sentence is also not inappropriate in light of the nature of the offense. Bright punched Waggle in the face several times and then fled. As a result of the beating,

[2] Indiana Code Section 35-50-2-6(a) provides: "A person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years. . . ."

Waggle suffered a broken nose, a fractured cheekbone, and dental injury.[3] Bright argues, again, that we should consider the reason for the altercation. But the alleged reason for the fight does not alter the character of the injuries inflicted when Bright punched him four or five times in the face and then fled.

Bright also argues that his offense "caused relatively little harm when compared to other Class C felony crimes such as Involuntary Manslaughter, Reckless Homicide, Child Molesting, or Operating a Motor Vehicle While Intoxicated[] Causing Death[.]" Id. at 8. But the sentencing range appropriate for an offense is set by the legislature, not the judiciary. Thus, Bright's argument must fail. And Bright contends that the nature of the injuries constitute an element of the offense of battery, as a Class C felony, and therefore "should not be considered as a basis for aggravating Bright's sentence." Id. at 7. But Bright has asked us to review his sentence under Appellate Rule 7(B), which requires that we review the nature of the offense. The nature of the offense includes any injuries suffered by the victim. Thus, Bright's argument is without merit. Bright has not shown that his sentence is inappropriate in light of the nature of the offense.

Affirmed.

DARDEN, J., and BROWN, J., concur.

[3] In his brief, Bright states that Waggle suffered loose teeth as a result of the battery. The State in its brief asserts that Waggle lost teeth as a result of his injuries. The record provided in Appellant's Appendix does not clarify the type of dental injury sustained.